IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 5 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT TAX

Versus

JAYANTILAL BHOGILAL, L.R. OF LATE BHOGILAL DEVCHAND,

Appearance:

1. GIFT TAX REFERENCE No. 5 of 1989
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 27/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, following question of law is referred to this Court for its

opinion:-

"Whether the Tribunal is right in law and on facts in holding that there was no deemed gift chargeable to gift tax in the instant case when the share of the assessee was reduced in favour of the other partners ?"

2. The respondent-assessee was a partner in a partnership firm styled as M/s Bhogilal Devchand. During the accounting period, (relevant assessment year is assessment year 1969-70), there was a change in the constitution of the firm whereby the share of the assessee was reduced from 40 per cent to 20 per cent and as a result thereof, the shares of other two partners who happened to be the sons of the assessee were increased from 40 per cent to 50 per cent and 20 per cent to 30 per cent respectively.

3. The assessee has filed his return of gift on 31.7.1970 declaring gift at Rs. Nil. The assessee had, inter alia, stated that since he had become very old and was not able to attend to the business of the firm efficiently on account of bad health, the other partners of the firm who were experienced in the business of the firm demanded more share in the profits and losses of the firm and hence, in the interest of the business of the firm, the assessee had agreed to get his share reduced and those of the other partners increased in the manner as stated above. The Gift-tax Officer, while framing the assessment, rejected the contention of the assessee and held that the right to share the profits and losses, being a valuable right in existing property, was transferred by the assessee without any consideration and without any commercial expediency. He has, therefore, computed the value of the gift of goodwill, effected by the assessee in favour of his sons by getting his share reduced to 20 per cent, at Rs.45,200/- and brought the said amount to gift tax.

4. Being aggrieved by the said order, the assessee preferred an appeal before the Appellate Assistant Commissioner who had accepted the assessee's contention that the change in the constitution of the firm had been brought on account of commercial expediency and the partners had agreed to share the profits and losses of the business in accordance with the shares specified in the partnership deed. He, therefore, considered the assessment made by the Gift-tax Officer as cancelled and held that the gift is not attracted on the reduction of the share of the assessee in the partnership business in

favour of the other two existing partners.

5. Being aggrieved by the said decision, the revenue has taken up the matter before the Tribunal and the Tribunal vide its order dated 17.1.1989 confirmed the order of the Appellate Assistant Commissioner. The Tribunal had held that though there would be a transfer of interest in the goodwill by an outgoing partner to the new partners by way of reduction of his share in the business, but that transfer would be for consideration and no taxable gift would come into existence. On the above facts, at the instance of the revenue, the above question is referred to us for our opinion.

4. The issue raised in the present reference is considered by this Court in Gift-tax Reference No. 2 of 1987 as well as Gift-tax Reference No. 3 of 1989 and this Court has taken a view that reduction of shares of the assessee in the profits of the partnership firm in favour of the other partners was for reasonable consideration and it would not amount to gift. In the case of Commissioner of Gift-tax vs. Chhotalal Mohanlal, (1987) 166 ITR 124, the father had reduced the share in the profits of the firm and the proportionate increase in the share of profits was given to the minor sons of the continuing partners, who had not contributed any capital. In the present case, as a matter of fact, because of the old age of the assessee, the share in the profits of the partnership business was reduced in favour of the remaining two partners who were well experienced in the business. Moreover, they also agreed to share the losses of the partnership firm. This would certainly amount to valuable consideration.

5. In this view of the matter, it cannot be said that the assessee has transferred a part of his share in the profits of the firm in favour of the remaining two partners without any consideration. We are, therefore, of the view that the Tribunal has not committed any error in holding that the impugned transfer of shares will be for consideration and no taxable gift would come into existence. We, therefore, answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

This reference is answered accordingly with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-